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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/130,041	08/06/1998	H. CRAIG DEES	PHO105	5652

7590 04/21/2005

COOK MCFARRON AND MANZO  
200 W ADAMS STREET  
SUITE 2850  
CHICAGO, IL 60606

EXAMINER

BARRETT, THOMAS C

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

<b>Office Action Summary</b>	Application No. 09/130,041	Applicant(s) DEES ET AL.	
	Examiner Thomas C. Barrett	Art Unit 3738	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 and 65-68 is/are pending in the application.
- 4a) Of the above claim(s) 5, 19, 29, 30, 32-34, 70 and 87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-18, 20-28, 31, 35-39, 65, 66, 68, 69 and 71-86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05-01, 01-05</u> . | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION*****Election/Restrictions***

Applicant's election of Claims 1-28, 31-33, 35-39, 65-66, 68-69, and 71-86 in the reply filed on January 6, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 29-30, 34, and 70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. The Examiner also withdraws claims 5, 19 and 32-33 as being directed towards an nonelected species.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-7, 10-18, 20-22, 29-31, 35-38, 65-66, 68-69, 71-74, 77-81, and 83-86 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. (5,576,013). Williams et al. discloses a method for treatment of disease, including vessels of the circulatory system, said method comprising the steps of: applying Rose Bengal and a chelator to diseased tissue to form a treatment zone (col. 5, line 7-col. 6, line 30); and applying light at 550 nm to said treatment zone to activate agent

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associated with said tissue, wherein said light penetrates said treatment zone while minimizing activation of said agent outside said treatment zone.

Claims 1-4, 6-18, 20-22, 29-31, 35-38, 65-66, 68-69, 71-74, 77-81, and 83-86 are rejected under 35 U.S.C. 102(b) as being anticipated by Kolobanov et al. (4,973,848). Kolobanov et al. discloses a method for treatment of diseased tissue, said method comprising the steps of: applying Rose Bengal (col. 4, lines 16-27) to diseased tissue form a treatment zone; and applying light at 550 nm to said treatment zone to activate agent associated with said tissue, wherein said light penetrates said treatment zone while minimizing activation of said agent outside said treatment zone.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-28, 34 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (5,576,013) in view of the admission of the present specification. Williams et al. discloses a method for treatment of diseased tissue, e.g. gastrointestinal tissue, however Williams et al. fails to disclose the use of a balloon or catheter. The specification of the present application admits "Barrett's esophagus is a perfect example of a superficial disease that is an attractive candidate for PDT as it occurs in a location that is difficult to access via conventional surgical means but is

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readily accessible using endoscopic catheters” The specification further admits that the use of a balloon and catheter is a “common method” (pages 5-6). It would have been obvious to one of ordinary skill in the art to combine the teaching of the use of a balloon and catheter, as admitted by the Applicant, to a method for treatment of diseased tissue as per Williams et al., the motivation to combine being it is an “attractive” method for disease treatments that are difficult to access. Please note that it would be obvious to use either a compliant or non-complaint balloon, as their use is not patentably distinct from one another as admitted by the applicant in the response of January 6, 2005.

Please note that the present application has a priority date of August 6, 1998 because of the “means for purging”. Purging in the above cited prior art is at least inherently “purged” and “heated” systemically by the body.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (571) 272-4746. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Thomas Barrett', with a long horizontal flourish extending to the right.

Thomas Barrett  
Examiner  
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